IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 308 OF 2006

M/s Mercantile Finance House
Private Limited, represented by
their Chairman Shri Mohammad
Ali Bhimji, having address at 203,
Unitec City Centre, 2nd floor
M. G. Road, Panaji, Goa. ... Applicant

versus

1. M/s Mac Enterprises,
through their Sole Proprietor
Mr. Alfred M. Cotta, having
address at Hotel Miramar,
Miramar, Panaji, Goa.

2. State ... Respondents

Mr. A. R. Kantak, Advocate for the Applicant.

Mr. A. Monteiro, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 4TH OCTOBER, 2006.

ORAL ORDER

The applicant herein is the complainant in C.C.No.12/0A/1997/D and is seeking special leave to appeal

against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881(Act, for short).

2. Heard the learned Counsel Mr. A. R. Kantak on behalf of the complainant and Mr. A. Monteiro, the learned Counsel on behalf of the accused.

3. There is no dispute as to the facts. Four cheques issued by the accused to the complainant bounced. The details of the said cheques are as follows:-

No.	**Date**	**Amount**
061724	1.8.1996	Rs.66,667.00
061725	1.9.1996	Rs.66,667.00
061726	1.10.1996	Rs.66,667.00
061729	16.10.1996	Rs.25,00,000.00

4. The complaint was filed on the allegation that the complainant had served on the accused a notice of demand dated 24-12-1996. However, the accused in the cross-examination of the complainant was able to obtain an admission from the

complainant to the effect that prior to the said demand notice dated 24-12-1996, demand notices in respect of all the four cheques were issued by the complainant to the accused dated 1-10-1996 in respect of the first three cheques and 23-10-1996 in respect of the fourth cheque.

5. The complaint came to be filed within one month from the date of the notice of demand i.e. 24-12-1996 in terms of Clause (b) of Section 142 of the Act which provides that filing of the complaint should be within one month from the date of which the cause of action arises under Clause (c) of the proviso to Section 138 of the Act. Needless to observe that the proviso below Clause (b) of Section 142 of the Act came to be inserted by way of amendment which came into force from 6-2-2003 which amendment was clearly inapplicable to the case at hand.

6. The learned J.M.F.C. in acquitting the accused by Judgment dated 4-5-2006 came to the conclusion that the ratio of the case of **Satishkumar s/o. Premchand Jain** v. **Krishnagopal s/o. Mohanlal Sarda**(1994(2) Bom.C.R.680) was inapplicable to the facts of the case and what was applicable was

the ratio laid down by the Apex Court in the case of **Sadanandan Bhadran** v. **Madhavan Sunil Kumar**(1998 CRI.L.J. 4066). The learned J.M.F.C. observed that since the complainant by notices dated 1-10-1996 and 23-10-1996 had demanded the payment of money due on the said cheques and had not filed any complaint thereafter inspite of non payment of the amount due on the said cheques, the complaint filed on 21-1-1997 was not maintainable. In other words, the learned J.M.F.C. came to the conclusion that the complaint which was filed within one month from the demand notice dated 24-12-1996 was time barred since the cause of action in filing the said complaint had arisen in favour of the complainant after the accused failed to comply with the earlier notices dated 1-10-1996 and 23-10-1996.

7. Mr. Kantak, the learned Counsel on behalf of the complainant has submitted that the law applicable at the time when the complaint was filed was the law laid down by this Court in the case of **Satishkumar s/o. Premchand Jain** v. **Krishnagopal s/o Mohanlal Sarda**(supra) and that there was a change of law after the decision of the Apex Court in the case of **Sadanandan Bhadran** v. **Madhavan Sunil Kumar**(supra).

8. The learned J.M.F.C. took note, and in my view rightly, whilst placing reliance on the Judgment of this Court in the case of **Satishkumar s/o Premchand Jain** v. **Krishnagopal s/o Mohanlal Sarda**(supra) that this Court had considered in that case that the accused had requested in writing to the complainant to present the cheque to the Banker for the second time when the complainant had issued a notice to him as regards the dishonour of the cheque by the Banker for the first time and that this Court had held that the complainant had presented the cheque for encashment for the second time as required by the accused and therefore this Court had held in para 13 of the Judgment that a fresh right had accrued in favour of the complainant every time a cheque is dishonoured upon presentation, he can enforce that right by initiating proceedings under Section 138 of the Act. The learned J.M.F.C. further held that there has been no change in the position of law as settled by this Court. Indeed, the facts relating to the said case of **Satishkumar s/o Premchand Jain** v. **Krishnagopal s/o Mohanlal Sarda**(supra) are mentioned in para 4 of the said Judgment. After discussion of various authorities, this Court preferred to follow the view expressed by the Calcutta High

Court in the case of **Sekhar Gupta** v. **Subhas Chandra Mondal** ((1992) 73 Company Cases 590) and by the Andhra Pradesh High Court in the case of **Richard Samson Sherrat** v. **State of A.P.**(1992 Cri.L.J.2566) and observed as follows:-

> "Thus, Section 138 of the Act lays down lays down that if a cheque issued pursuant to a debt or other liability is returned by the banker either because the funds were insufficient to honour the cheque or the amount of the cheque exceeds the amount arranged, the drawer shall be liable to be punished as provided therein. A cheque can be presented to the Bank within a period of six months from the date on which it was drawn or within the period of its validity, whichever is earlier, as laid down in Clause (a) of the Proviso to Section 138. Clause (b) of the said proviso lays down that the payee or the holder in due course may make a demand for payment of the amount covered by the cheque by giving notice in writing to the drawer of the cheque within 15 days of the receipt of intimation of dishonour of the cheque. Clause (c) of the said proviso contemplates 15 clear days notice to drawer and enables the drawer of the

cheque to make the payment of the amount covered by the cheque within the said period of 15 days after the receipt of the notice. Clause (b) of Section 142 imposes a limitation of one month for lodging a complaint from the date on which the cause of action arises under Clause (c) of the proviso to Section 138. Therefore, Clause (a) of the proviso to Section 138 does not lay down as to the number of times a cheque can be presented to the Bank. A cheque can be presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. This is the only mandate of law and it does not enjoin that a cheque should presented to the Bank for payment only once. There is no restriction on the number of times it may be presented. A cheque can be presented for payment twice or more times within the aforesaid period of six months or the period of tis validity and if it is dishonoured, then on such dishonour of the cheque a fresh right accrues in favour of the complainant every time and he can enforce that right by initiating proceeding under Section 138 of the Act".

9. The Apex Court in the case of **Sadanandan Bhadran** v. **Madhavan Sunil Kumar**(supra) did not follow the view held by the Division Bench of the Kerala High Court in **Kumaresan** (1991(1) Kerala Law Times 893), which view was also not followed by this Court in the case of **Satishkumar s/o Premchand Jain** v. Kr**ishnagopal s/o Mohanlal Sarda**(supra). The Apex Court held that a cheque can be presented any number of times during the period of its validity and that was the consistent view of all the High Courts except that of the Division Bench of the Kerala High Court in **Kumaresan**(supra). The Apex Court after considering the provisions of Sections 138(b) and 142(c) observed that both the said provisions could be harmonized with the interpretation that on each presentation of the cheque and its dishonour a fresh right - and not cause of action - accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under Clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under Clause (b) of Section 138 he forfeits such right, for, in case of failure of the drawer to pay the money within the stipulated time he would be

liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer, expires. The same view has been followed by the Apex Court in the case of **Prem Chand Vijay Kumar** v. **Yaspal Singh and another**((2005) 4 SCC 417). In the case of S**atishkumar s/o Premchand Jain** v. **Krishnagopal s/o Mohanlal Sarda** a fresh cause of action had arisen in favour of the complainant after the accused had informed the complainant in writing to present the cheque again. That is not the case at hand. The complainant having served upon the accused the pre-emptory notices on 1-10-1996 and and 23-10-1996 in respect of the subject cheques ought to have proceeded with filing of the complaint within thirty days as contemplated by Clause(b) of Section 142 of the Act and having not done so, the complaint filed was clearly time bared. Although the law laid down by this Court and the Apex Court is the same, even otherwise, the law laid down by the Apex Court would have been the law applicable at all times.

10. The view held by the learned J.M.F.C. could not be faulted. This is not a case to grant special leave. Application dismissed.

N. A. BRITTO, J.

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